
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 1088 **Hearing Date:** April 19, 2016
Author: Nguyen
Version: March 28, 2016
Urgency: No **Fiscal:** Yes
Consultant: JM

Subject: *Wrongful Concealment: Accidental Death*

HISTORY

Source: Author

Prior Legislation: SB 139 (Johnson) – Ch. 396, Stats. 1999

Support: California State Sheriffs' Association; Orange County District Attorney; City of Santa Ana Police Department; City of Anaheim Police Department; Los Angeles County Sheriff's Department; Orange County Sheriff's Department; several hundred individuals

Opposition: American Civil Liberties Union of California; California Public Defenders Association

PURPOSE

The purpose of this bill is to raise the penalty for concealing an accidental death from a misdemeanor to an alternate felony-misdemeanor (wobbler).

Existing law provides that it is a misdemeanor to actively conceal an accidental death, or attempt to do so. This misdemeanor is punishable by a jail term of up to one year, or a fine of between \$1,000 and \$10,000, or both. (Pen. Code § 152, subd. (a).)

Existing law provides that to conceal an accidental death means to do one of the following acts:

- Perform an overt act that conceals the body or directly impedes the ability of authorities or family members to discover the body.
- Directly destroy or suppress evidence of the actual physical body of the deceased, including, but not limited to, bodily fluids or tissues.
- Destroy or suppress the actual physical instrumentality of death. (Pen. Code § 152, subd. (b).)

Existing law provides that employers must immediately report a workplace death to the Cal-OSHA (California Occupational Safety and Health Administration). (Lab. Code §§ 6409.1 and 6409.2)

Existing law provides that any person who receives anything of value in exchange for the destruction or concealment of evidence of a crime is guilty of an alternate felony misdemeanor punishable by imprisonment pursuant to Penal Code Section 1170, subdivision (h), for sixteen months, two years or three years, or in the county jail for up to one year, where the crime concealed was punishable by death or life in prison; by imprisonment pursuant to Penal Code Section 1170, subdivision (h), for sixteen months, two years or three years, or in the county jail for up to six months where the concealed crime was punishable by a non-life prison term; and by imprisonment in the county jail for up to six months where the crime concealed was a misdemeanor. The maximum fine for a conviction under this section \$1,000 for misdemeanor and \$10,000 for a felony. (Pen. Code § 153)

Existing law provides that any person who, after the commission of a felony, helps the perpetrator escape arrest or prosecution is guilty of an alternate felony-misdemeanor, “punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment pursuant to subdivision (h) of Section 1170, or in a county jail not exceeding one year, or both a fine and imprisonment. (Pen. Code §§ 32-33.)

This bill makes the existing misdemeanor of active concealment of an accidental death an alternate felony-misdemeanor (wobbler).

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state’s ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its “ROCA” policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as “of December 9, 2015, 112,510 inmates were housed in the State’s 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015.” (Defendants’ December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants’ December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14)). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

Erica Alonso, a resident of Laguna Hills, went missing on February 15, 2015. Her body was later found a few months later on April 27, 2015 in a dry creek bed near Ortega Highway and Hot Springs Canyon Road near San Juan Capistrano. Erica’s death was not a homicide. However, someone with her moved the body to hide the fact that she had died. For this reason, Erica’s family and friends had no way to locate her, resulting in additional trauma to the family and community at large.

Following the discovery of Erica’s body, public outcry surfaced and a rally took place in Santa Ana that sought justice for Erica. One of the community’s frustrations centered on the lack of an appropriate penalty. Currently the consequence for dumping a body is a maximum penalty of not more than one year in county jail or by a fine of not less than one thousand dollars (\$1,000), nor more than ten thousand dollars (\$10,000), or by both a fine and imprisonment.

Specifically, Senate Bill 1088 amends the California Penal Code to increase the penalty for the concealment of a body due to an accidental death to a “wobbler” from a misdemeanor. In this case, a penalty increase to a “wobbler” would allow a judge to impose a greater penalty if the circumstances warrant it.

2. Issues Related to Punishment and Deterrence

This bill raises the penalty for actively concealment of an accidental death from a misdemeanor to a felony. In cases where a person conceals the death of another, questions about the culpability of that person for the death of the decedent can arise. The likely major purposes of

imposing criminal liability for concealing a death are to impose an appropriate penalty for conduct that would shock the conscience of most people, and to deter such conduct.

The author's statement indicates that the main purpose of this bill is punishment – what is described as “just deserts” in criminology. A 2002 article in the *Journal of Personality and Social Psychology* succinctly described the theory:

The theory of just deserts is retrospective rather than prospective. The punisher need not be concerned with future outcomes, only with providing punishment appropriate to the given harm. Although it is certainly preferable that the punishment serve a [deterrence] function... its justification lies in righting a wrong, not a ... future benefit. The central precept... is that the punishment be proportionate to the harm. The task ...is to assess the magnitude of the harm and to devise a punishment that is proportionate in severity, if not in kind. Kant (1952) recommended censure proportionate to a perpetrator's “internal wickedness,” a quantity that may be approximated by society's sense of moral outrage over the crime. (*Why do We Punish?*, *Journal of Personality and Social Psychology*, (2002) Vol. 83, No. 2, 284–299, Carlsmith, Darley and Robinson.)¹

The possible gain the person who causes a death could realize from actively concealing a death might greatly outweigh any deterrence value provided by the current misdemeanor or the higher penalties that would be imposed under this bill, particularly if concealing a death impedes a criminal homicide investigation. The punishment for murder is death or life in prison. (Pen. Code § 190.) The upper term sentence for manslaughter is eleven years in prison. (Pen. Code § 193) Where a person does not commit a murder, but assists another after the homicide, he or she is guilty of being an accessory, an alternate felony-misdemeanor. (Pen. Code § 32) As noted above, one may be guilty of compounding a felony where he or she takes anything of value to conceal a crime or destroy evidence of a crime. (Pen. Code § 153)

Even where criminal liability does not attach, the consequences of reporting a death could be substantial. One who is the negligent cause of the death of another is liable for severe civil (monetary) damages in the tort of “wrongful death.”

3. Vagueness Issues Related to the Term "Accidental Death" – No Appellate Decisions on the Current Law

The current misdemeanor of actively concealing an accidental death became effective 2000. It is not known how many defendants have been prosecuted under this law. Committee staff has been unable to find any appellate decisions interpreting the statute. That is not surprising, as misdemeanor appellate decisions by the superior court appellate division are seldom published. If the felony penalties in this bill are enacted, there would be a greater likelihood that a conviction would be challenged and a published decision on the statute issued by the Court of Appeal.

One issue that might arise on appeal is whether the term “accidental death” is vague. To survive a challenge that a criminal statute is as vague as to deny due process, the statute must inform a person of ordinary intelligence what it prohibits or requires. (*Connally v. General Construction*

¹ http://www.colgate.edu/portaldata/imagegallerywww/184416d4-5863-4a3e-a73b-b2b6b86e7b60/ImageGallery/Carlsmith_Darley_Robinson_2002.pdf

Company (1926) 269 U.S. 385.) Neither current law nor this bill defines “accidental death.” It appears that an accidental death would encompass any death that was not a criminal homicide. The determination of whether a death was accidental or intentional, and thus likely prosecuted as a criminal homicide, may not be simple.

4. Fifth Amendment Issues Directly Related to the Terms in This Bill

Under this bill, where the police believe that a person has concealed a death, *Miranda* warnings would be required in any interview conducted while the suspect was in custody or its functional equivalent. A "suspect" is a person upon whom investigating officers have focused their attention as the likely perpetrator of a crime. (*People v. Stansbury*, (1993) 4 Cal.4th 1017, 1050-1054.) "Custody" generally means detention by the police such that the person is not free to leave. (*Id.*, at 1053-1054; *People v. Esqueda*, (1993) 17 Cal.App.4th 1450.)

Evidence that would supply generalized suspicion about a murder - the person's concealment of a death - would constitute particular suspicion about the crime of concealing a death. The police would then be required to inform the person of his or her right to remain silent as to a possible prosecution for concealing the fact of a death. If the person then refuses to speak to the police and hires counsel, important evidence could be lost. If a suspect in a concealment of a body case is interrogated in custody and *Miranda* warnings are not given, admissions by the suspect which implicate him or her in a murder could be found to be inadmissible in court.

5. Concealment of a Death as an Additional Charge in a Murder Prosecution and Powerful Evidence of the Defendant's Consciousness of Guilt

There may be numerous cases where a person who conceals a death is investigated, arrested and prosecuted for murder or another form of homicide. If the person is not arrested and questioned as a suspect in the concealment of an accidental death that offense could still be included as an additional charge in a homicide prosecution. If there is insufficient evidence to prove murder or manslaughter, the defendant could still be convicted of concealing an accidental death.

Further, proof that a murder defendant concealed the body of the decedent would certainly be used as important and powerful evidence of consciousness of guilt. In any case in which the defendant fled the scene of a crime, intimidated witnesses or hid evidence, the court would instruct the jury that the defendant's conduct could be considered in determining his or her guilt. (Pen. Code § 1127c.)

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